



1951

File No. ^{O. Leases} /51

Legal Dept

A BRANCH

Subject:—Opinions regarding

Leases

P 55F.

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C O N T E N T S.

Legal Department File No. O. Lease /51.

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Condition 1 of the Conditions of the auction sale provides that the intending bidder shall deposit a sum of Rs. 500/- into the office of the Collector, B.S.D., before the date of the auction. Condition 3 provides that the person in whose favour the sale of the lease will be sanctioned shall pay the whole amount within seven days. Condition 14 is to the effect that if a breach of any of the conditions of the lease is made, the lease shall be cancelled and the lease money and the deposit forfeited to Government and such steps as shall be deemed necessary under the Land Revenue Code shall be taken. It is true that this last condition 14 expressly permits the the forfeiture of deposit in case of a contravention of any of the terms of the lease; but the conditions which would be incorporated in the lease are those specified as 3 to 12. Reading them altogether, it appears that the intention of demanding the deposit from the bidders was to secure the due performance of the contract. Even otherwise the sum deposited under condition 1 is of the nature of a deposit as known to law. What is strictly known as deposit must possess a two-fold character. It must first be a part payment and next it must be of the nature of money staked. This dual nature of what is known as deposit is most tersely referred to

by Lord Justice Cotton in the case of Howe v. Smith,
(1884) 27 Chancery Division 89:-

"If the sale goes on it goes in part
payment of the purchase money for which it
is deposited; but if on the default of the
purchaser the contract goes off, that is to
say, if he repudiates the contract, he can
have no right to recover the deposit."

Since the offer of Messrs. Basant Housing Corporation
'Ltd.' for Rs. 11,757-8-0 has been accepted by Government,
there is a concluded contract which can be enforced by
Govt. As the Corporation has repudiated the contract
by refusing to pay the whole amount as provided in
condition 3, it would be legally permissible to
forfeit the deposit paid by that Corporation on
the ground that the sum was a deposit as known to
law, and the Corporation would have no right to
recover it since the contract has been repudiated.

Sd/-

29/12.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 28, dated 2nd January 1951.

Legal Department.

Renewal of lease
granted to Belapur
Sugar Co., Ltd.

In his opinion No. 8476, dated the 21st June 1950, the R.L.A. had expressed the view that on a strict technical view of the terms of the lease granted to the Belapur Sugar Company, Limited, the Company would be entitled to a renewal of the lease on the basis of the unrevised assessment now obtaining in which case the Company would get a further guarantee of 30 years of the unrevised assessment. The R.L.A. had, therefore, advised that negotiations may be made with the Company with a view to induce them to agree to a new clause that rent should be revised with effect from the date when the new revision settlement comes into force. The Company is not however prepared to agree to such a condition (p. 95 ante). The R.L.A. is requested to advise on the point raised at 'A' on page 101 ante viz., whether there is any way of forcing the Company within the terms of the lease to agree to reasonable rent or water rate.

2.) The answer to the point raised by the Under Secretary, Revenue Department, so far as rent is concerned is in the negative. Clause 3 of the lease provides inter alia that the period of thirty years for which the Company holds the lands under cultivation shall be renewable at the option of the Company for two

further periods of 30 years plus a further period of 9 years at the annual rental fixed under that clause viz., a sum equal to 10 times the current annual agricultural assessment, in respect of area under sugar-cane cultivation and 3 times the assessment in respect of area not under such cultivation. As pointed out in the previous opinion the basis for the levy of rent is the current agricultural assessment and the option of renewal on that term is given to the Company and is not left with Government. In view of the clear working of the clause there does not appear any scope for compelling the Company to agree to pay higher rent.

3. As regards the water rate attention is invited to paragraph 3 of the previous opinion.

Sd: J.N. Daurandhar.

6/2.

Addl. Secy. to Govt.

U.R. to R.D., No. 2302, dated the 6th February

1951.

Office of the R.L.A.

If rent is accepted from a person in occupation of premises, such acceptance would presume the relationship of landlord and tenant even though the original occupation of the premises were unauthorised. The fact that Shri Pahlajrai Sitaldas Mankani got into occupation of the premises clandestinely and the rent was accepted from him by the local authority through inadvertence would not make any difference to the legal position when admittedly rent is accepted from him, which would establish his recognition as a tenant. Consequently, the only course open to Government would be to take steps to evict him through a Civil Court. As advised by the R.L.A. in his last opinion No. 9402 dated 6th July, 1950, it appears necessary to pass a legislation similar to the Central Legislative Act, XXVII of 1950 to facilitate the eviction of such persons in wrongful possession of Government premises.

Sd/-

31/1

Remembrancer of Legal Affairs

Office of the R.L.A.]

A mere license does not create any estate or interest in the property to which it relates; it only makes an act lawful which without it would be unlawful. It is not assignable by the licensee.]

Section 56 of the Indian Easements Act, 1882 provides that unless a different intention is expressed or necessarily implied a license to attend a place of public entertainment may be transferred by the licensee but, save as aforesaid, a license cannot be transferred by the licensee or exercised by his servants or agents.]

Clauses (1) and (2) of the Agreement for lease dated the 29th July 1941 provide that until the grant of a lease the licensee (Shree Jethalal Premjee) shall be a bare licensee only and that nothing contained in the said Agreement shall be construed as a demise in law of the land agreed to be thereby demised or any part thereof until the lease thereby contemplated shall be executed and registered but the licensee shall only have a license to enter upon the said land for the purpose of performing the Agreement. The expression "Licensee" in the agreement included his heirs, executors and administrators but the word assigns

which would normally appear in such definition has been deliberately omitted. It cannot therefore be said that the license is transferable by necessary implication. It is therefore ~~fitable~~ but not transferrable. However the nature of the work to be executed under the Agreement requires that it should be entrusted to the servants or agents of the Licensee.

Under the Agreement for sub-lease dated the 25th November 1949 the Licensee has in his turn given similar license and authority to Shree D.D. Punjabi. He has also agreed and undertaken to execute any power of attorney and all such further and other documents as may be necessary with a view to carry out more effectively the arrangement there set out or any part thereof. The arrangement is that Shri Punjabi should at his cost and within a period of two years from the date of the Agreement or in the event of any requisition from the Collector of Bombay during a lease period, construct a building in accordance with the terms of the Agreement and on the completion of such building the Licensee shall after obtaining a lease from Government grant a sub-lease to Shri Punjabi for a period of 99 years less 8 days at the annual rent of Rs. 21,663-8-0 which is about three times the rent reserved to Government. The Agreement

also reserves to Shri Punjabi an option to have an assignment of lease on payment of a sum of Rs.2,85,724. Shri Punjabi has paid a security deposit for the due observance of the terms of the Agreement.

It will thus appear that Shri Punjabi is not a mere Agent for executing the work under the Agreement on behalf of the Licensee. He has himself an interest in the property which is the subject-matter of the license. Being coupled with an interest in the agency will be irrevocable and therefore it must amount to a transfer of the license. No separate deed of transfer would be necessary for such a transfer.

The device is ingenious and if overlooked may spread over to the other unbuilt plots. It seems desirable to terminate the Agreement on the ground that the arrangement amounts to a transfer of the license which by its terms is not transferrable.

The non-completion of the building within the extended period amounts to a breach of the Agreement and it will be possible for Government to resume the land after giving the licensee notice in writing to complete the building within a period of one month as provided in clause (b). The fact that the plans were approved as late as in March 1950 will not ordinarily come in Government's way as a lessor does not necessarily waive forfeiture by allowing the licensee to proceed with the work.

Sd: J.R. Dhurandhar.

U.R. to R.D. No. 3929,

9/3.

dt. the 9th March, Remembrancer of Legal Affairs.

GJT: 28.6.4.

Legal Department.

The view taken by the Public Works Department at page 106 ante is correct. Under Clause 11 of the Lease between the Belapur Company Limited and Government, the Company has agreed "to pay to the Lessor a rate for the supply of such water for sugar-cane cultivation of Rupees Forty-Five per acre for perennial and Rupees Eight per acre for rabi irrigation extending up to eight months the Lessor having the right to increase the said water rate to the same rate as is charged to outside cultivators immediately on each renewal of the lease." The words "immediately on each renewal of the lease" clearly indicate that the change in the water rate, so as to tally with the rates charged to the outside cultivators, can be done only ~~and~~ on each renewal of the lease. Consequently, when once at each renewal the rate chargeable to the Company is fixed so as to be the same as is charged to outside cultivators that rate would be unalterable during the period of the renewal of the lease. It appears that the lease is to be renewed with effect from 1-4-1950 and the rate chargeable to the outside cultivators on that date could be charged to the Company. Consequently, the rate fixed by Government for the outside cultivators up to 14-2-1951 at Rs. 60/- per acre for 124 unit

supply would be the rate chargeable to the Company. It would not be competent for Government to charge higher rates for the next two years 1951 and 1952 at Rs.80/- and Rs.90/- respectively and to provide for such rates later on as would be charged to out-side irrigators. Conversely if the rates for outsiders are variable at progressively lower rates, it would not be open to the Lessee to claim the benefit of such reduced rates during the period of the renewal. The position thus is not a happy one from ^{either} the point of view of Government or the Lessee. The P.W.D. if they deem fit may consider the modification of the clause with the agreement of the lessee.

Sd:-

Additional Secretary to Government.

U.R. to R.D. No. 5657, dated the 12th April 1951.

G.T. 28.6.4

L.D.R.I.No.12443.
 dt. 20/7/50.

Submitted with ref. to R.L.A.'s opinion
 No. 8457 dt. 20/6/50.

H.M.R.D. considers that the Mamlatdar's view that the Chitroda land given to S.V.K. & S. Industries is the same as was granted to the villagers by the Jagir is correct and that the S.V.K. & S. Industries cannot get the land which was granted to and held by the villagers whose evidence is most reliable. He therefore considers that the grant of the S.V.K. & S. Industries should be cancelled and it may be left to them to agitate the matter in a court of law.

R.L.A. has therefore been requested to reconsider his opinion No. 8457 dt. 20-7-50.

R.L.A.

Legal Department.

From enquiries made by the Revenue Department of the Collector of Sabarkantha it would be seen that the ~~land~~ lands in question had never been reserved or entered as Gaucharan; but that as the lands were open, they were used by the people to graze their cattle. It appears further from the Collector's letter at page 111 ante that the representatives of the village of Chitroda have filed a suit against the Government and others challenging the validity of the sale and for restoration of possession etc. In these circumstances there does not appear any need to modify the R.L.A.'s opinion at pages 71-73 ante.

Sd/- [Signature]

Additional Secretary to Government

dated the 23rd April 1951.

Office of the R.L.W.

It is stated at p. 3 ante that the property is now in possession of Government and the Executive Engineer Presidency Division, is looking after it, and is collecting rent from tenants. If so, Government may alone file the suits for ejectment against the tenants, and if necessary, the Bombay Municipality's letter at p. 55 ante and the order of the Bombay High Court approving of the ~~proposed order~~ ~~transfer of the building~~ ~~of the Government~~ transfer of the building ^{to} of the Government may be produced in Court in support of Government's claim.

Sd: J. R. Dhurandhar

16/4

Remembrancer of Legal Affairs

U.R. to H.D., No. 6295, dated the 18th April,

1951

Legal Department.

It is true as stated by the R.D. that the questions what is "substantial damage" and what is "reasonable compensation" are both questions of facts. But the view expressed by the District Deputy Collector, Jambusar Division, and the Collector of Broach that because the lease does not provide how the damage shall be determined, the persons affected should be left to seek relief in a Court of Law does not appear to be correct. The parties affected may be asked by the Collector to put in their claims for compensation for alleged damage; and the Collector then, after due notice to the lessee, scrutinise the claims and assess the reasonable compensation. He can then call upon the lessee to pay the compensation as assessed by him. If he fails to do so, the Government would be justified in taking steps for the determination of the lease. There is no objection also to the Collector ascertaining whether the actual damage caused by waterlogging is of a substantial nature for considering whether action can be taken under condition 3 of the lease.

Sd/- [Signature]

Additional Secretary to Government.

U.R. to R.D. No. 7005, dated the 2nd May 1951.

Office of the R.L.A.

In this case Government has not accepted the liability for the damage. As already explained by the Remembrancer of Legal Affairs under the lease there was no such liability if the fire was accidental. Apart from the lease, Government will not be liable for the negligence of their servant. There is no need to reply. If the suit is filed, it will have to be defended.

Sd: J.R. Dhurandhar.

15/6

Remembrancer of Legal Affairs.

U.R. to H.D., No. 9542, dated the 16th June 1951.

Under the Transfer of Property Act, 1882, the landlord is under no liability to repair in the absence of an express contract to the contrary; (see Transfer of Property Act, section 108(f); *Lakshmichand V. Ratanbai* (1927) 51 Bom 274). However the position would be different under the Bombay Rent Act, 1947. Section 23(1) provides that notwithstanding anything contained in any law for the time being in force and in the absence of an agreement to the contrary by the tenant every landlord shall be bound to keep the premises in good and ~~tenantable~~ tenantable repairs. Having regard to the trend of judicial decisions the provisions of the Rent Act would apply to properties vested in Custodian of Evacuee Property and the effect of section 23(1) would be to put on the Custodian the liability under an express covenant to keep the premises in good and tenantable repairs. The liability under such a covenant would mean the liability to keep the premises in such repair as, having regard to the age, character and locality of the premises, would make them reasonably fit for occupation of a reasonably minded person of the class who would be likely to take them. (*Proddoot V. Hart* (1890) 25 Q.B.D. 42). Repair, in the words of Lord Atkin (*Calthorpe v. M c. Oscar* (1924) 1 K.B. 716) connotes the idea of making good damage so as to leave the

subject so far as possible as though it had not been damaged. It involves renewal of subsidiary parts; but does not involve renewal of the whole. Time must be taken into account; on old article is not to be made now; but so far as repairs can make good or protect against the ravages of time and elements it must be undertaken. Where from the effect of time on the materials used, as well as faulty construction, a house during a demise, in which the landlord had covenanted to keep the outside in repair had fallen into such a condition that repairing without rebuilding was impossible it was held that the landlord was not liable. (Torrow v. Walker (1906) 2 Ch. 166). However if the want of repairs is such as would come under the expression "good and tenantable repair" and the tenant sustains a personal injury or other loss by reason thereof ~~then~~ he would be entitled to recover damages in respect thereof (Griffin v. Pollot. (1926) 1 K.B. 17).

It is presumed that the want of repairs is such that unless rebuilt the properties cannot be made inhabitable. If the presumption is correct the Custodian will not be liable. Even where liable his liability will be restricted to the assets of the evacuee in his hands. Under the circumstances it may be advisable to give

(Page No. 28 continued)

~~with the same object as the proposed~~

notices to the occupants as proposed.

It is informally ascertained from the Secretary R.H.D. that there are two kinds of occupants in occupation of the premises. Some are recognised tenants and others are unauthorised occupants. In case of unauthorised occupants there would be no liability on the Custodian for non-repairs.

Separate forms of notices to be given in case of recognised tenants and unauthorised occupants are appended. Since it is not proposed to undertake any repair no mention thereof is made in the draft notices.

In the case of recognised monthly tenants the date to be filled in paragraph 2 of the draft notice should be the date of the month succeeding the one in which the notice is given and notice served before the expiration of the month in which the notice is to be given.

Sd: J.R. Dhurandhar

20/6

Remembrancer of Legal Affairs

U.R. to C.E.P., No. 9871, dated 21st June 1951

Form of Notice in the case of recognised monthly tenants.

To

Sri

Subject:- building at -

You are aware that the above named building is very old and in a dilapidated and dangerous condition. On inspection thereof, the Custodian of Evacuee Property, Bombay State, in whom the same at present vests, has been advised that the building is too old for repairs of any kind and cannot be made inhabitable unless it is rebuilt entirely.

2. The Custodian of Evacuee Property, Bombay State, has accordingly decided to terminate your tenancy in respect of the premises in the above building at present in your occupation and you are hereby called upon to quit vacate and deliver vacant possession of the said premises to the Custodian of Evacuee Property, Bombay State, or any person authorised by him at the end of the current month of ~~the~~ your tenancy, viz., on the day of / 1951.

3. Apart from the steps which may be taken against you, in default of your complying with the requisition set out in paragraph 2 above, you are hereby warned that if in spite of this notice you continue to occupy the said premises, you will occupy the same solely at your risk and the Custodian of Evacuee Property, Bombay State, will not be liable for any loss or injury that may be occasioned by any mis-hap to the building or any part thereof.

Legal Department.

It is difficult for the Solicitor to Government to give clarification of expressions used in departmental communications. It is for the Department concerned to do so.

2. Sub-letting is letting of the lease-hold premises by the tenant. It may be of a part of the premises or of the whole premises. The broad test is whether the person alleged to be a sub-tenant is in exclusive possession of the whole or any part of the premises capable of being let or sub-let. Further factors which also require consideration are whether the alleged sub-tenant pays any rent to the tenant and how long has he been in possession of the premises or the part alleged to be sub-let to him.

3. Since the Rent Act does not apply to the premises belonging to Government, its provisions will not come in the way of the tenant in evicting his sub-tenant.

Sd/- [Signature]

21/6

Solicitor to Government.

U.R. to L. & H.D. No. 10069, dated 25th June, 1951.

Legal Department.

1. Lease (tenancy) can be terminated by giving one month's notice without assigning any reason therefor.

2. If any reason is assigned in the notice to terminate (in this case it is a breach of condition 6 of the tenancy agreement) then the notice must specify the breach complained of and require the tenant to remedy the same, if it is capable of remedy and on the failure of the tenant to remedy the breach within a reasonable time, a suit for ejectment can be filed against the tenant.

3. Course indicated in para 1 is desirable.

Sd: R.N.

28/6.

Solicitor to Government.

U.R. to Labour and Housing Department No. 10342

dated the 29th June 1951.

Office of the R.L.A.

It is presumed that the lessor was informed that the building was being vacated by the Government when the Police vacated it from 1st May 1950 and that he took over possession of it. In the absence of any regular lease fixing the period for 2 1/2 years the tenancy can be regarded as a monthly tenancy, liable to termination by a month's notice. As it appears that no such notice was given to the lessor, he can claim from Government one month's rent in lieu of notice.

Sd: J.R. Durandhar.

13/7.

Remembrancer of Legal Affairs.

U.R. to H.D., No. 11089, dated the 13th July 1951.

Office of the R.L.A.

It appears that some lands at Kurla have been leased after inviting tenders, by the Director of Rehabilitation, Government of Bombay, to one Shri A.I.D'Souza, Police Patil of Kurla for one year commencing on 1st July 1951 at a rent of Rs.5200/-. One of the terms of the lease prohibits sub-letting. H.M.(R.H.D.) has directed the Director of Rehabilitation to delete this term from the lease. The question raised for the R.L.A.'s consideration is whether the lease itself is binding on Government.

2. The agreement in respect of the lease has been made between the Director of Rehabilitation, Government of Bombay, and Shri A.I.D'Souza. D'Souza is a Police Patil, and as a Government servant is bound by the Bombay Civil Services Conduct Discipline and Appeal Rules. Rule 15 of the said rules prevents a Government servant from acquiring by purchase or gift any immoveable property within the district where he is employed. But there is no provision in any of these rules prohibiting Police Patils from taking any property of Government on lease. In Syamlal v. Chikulal, 22 Allh. 220, it was held that "agreement by a Patwari or any Government servant for the purchase of land situate within his circle or for the acquisition of any other

interest therein would be opposed to public policy under section 23 of the Contract Act." But that decision was over-ruled by the Bench of the same Court in Bhagwan Devi v. Murari Lal, 39 Allah. 51. Following the latter decision in Dharwar Bank Ltd. v. Mohammad Hayat, 33 Bom. L.R. 250, Patkar J. observed:

"Though the conduct of a person might be opposed to public policy, the subject-matter of the contract is not necessarily opposed to public policy in the absence of any statutory prohibition."

Although the conduct of the Police Patil in taking Government land on lease might be considered opposed to public policy inasmuch as there would be a conflict of interests, there is no statutory prohibition from taking any Government lands on lease by a Police Patil. It appears, therefore, that it would be difficult to hold that the lease of Government lands to Shri D'Souza in the present case is opposed to public policy. Moreover in this case the lease was taken from a Government department itself. It is not alleged that in taking up the lease D'Souza practised any fraud or deception. But the lease in this case is not in conformity with Article 299(1) of the Constitution whereunder all contracts are required to be made and executed on behalf of the Governor of the State. The lease

being in contravention of Article 299(1) of the Constitution is not binding on Government. It would, therefore, be competent for Government to cancel the lease and take possession of the land from Shri A.I.D'Souza.

Sd: J.R. Dhurandhar,

18/7/51

Remembrancer of Legal Affairs.

U.R. to R.H.D. No. 11378, dated the 13th July 1951.
(H.M.(R.H.D.))

The Director of Rehabilitation had no power to execute the present lease. Now that the lessee has allowed the tenants to continue on the land, it is not necessary to cancel the lease.

Sd: J.R. Dhurandhar,

Remembrancer of Legal Affairs.

U.R. to R.H.D., No. 11477, dated the 20th July 1951.

Submitted.

M/S. Surveyor & Co. have requested the Collr. of Bombay to obtain Collr.'s sanction to the assignment of the half share of the deceased H.G. Padamsee in plot No. 379 of Mazgaon to M/S. Amiralali H. Padamsee and Akabarali H. Padamsee jointly with the present Executor and Trustees of the will of the deceased Shri H.G. Padamsee. The Collr. sees no objection to permit the assignment and R.D. accordingly proposes to issue the necy. orders. Before issue of the orders the pps. are being shown to L.D.

Legal Department

Seen and returned.

Sd/-

Additional Secretary to Government.

U.R. to R.D. (through P.W.D. and F.D.)

No. 11593, dated 23 - 7 - 1951

GJT. 28.6.4

Legal Department.

Under clause 2(e) of the Lease executed between Government and Venku Hari and others, the lessees have agreed to keep the bungalow and buildings at all times in a state of good and sufficient repair to the satisfaction of the Collector. Clause 4 provides for the levy of a fine of Rs. 50/- for the breach of any of the terms of the lease. This clause does not provide for the levy of fine of Rs. 50/- for any continued breach of any of the terms of the lease. Consequently, it would not be legally feasible to levy a fine of Rs. 50/- for every day on which such breach continues after the day on which the fine has been imposed.

The Collector of Satara has stated in his letter at page 1 ante that the lessees were called upon on 31-12-1947 to carry out certain repairs to the property which they have not done up till now. It would, therefore, follow that the lessees have been persisting in the commission of the breach of clause 2(e) of the lease. Consequently, it would be competent to take action under clause 5 of the lease and terminate the lease and resume possession of the property.

The view taken by the Under Secretary, Local Self Government and Public Health Department is correct.

Sd/-

Additional Secretary to Government.

Office of the R.L.A.

Lease of
Huzur Paga
Estate.

The lease of the Huzur Paga Estate by the Raja of Sangli was recognised by this Government in Government Order. Education Department No. 2138, dated the 11th October 1890 as the Huzur Paga Estate was a political holding which could not be alienated without Government's consent. The Society is not anxious to continue the old lease and has requested for a fresh lease. There would, therefore be no objection to Government entering into a new lease with the Society on such terms and conditions as would be settled between them.

Sd: J.R. Dhurandhar.

10/8.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 42991, dated the 13th August 1951.

GJT. 28.6. 4 cs.

Office of the R.L.A.

In the present case there is no express stipulation for payment of interest nor can any claim be made on the ground of mercantile usage. However, section 1 of Interest Act, 32 of 1839 provides that where there is no stipulation to pay interest but the amount claimed is sum certain (as distinguished from unascertained damages), and is payable at a certain time by virtue of some written instrument, the Court may allow interest at a rate not exceeding the current rate of interest from the date on which the amount became payable. If no time is fixed for payment the Court may award interest at the rate aforesaid from the time the creditor demands payment in writing intimating to the debtor that interest will be claimed from the date of such demand and upto the date of such payment. Rent reserved under a lease is a sum certain payable on fixed date specified in it and interest can be claimed on the arrears of rent. However the proper course will be to send a notice of demand to the Lessee before the expiration of the grace period, demanding the arrears and intimating that, without prejudice to the other rights of Government under the Lease, interest at the specified rate will be charged on the amount of arrears from the date of demand till payment.

Sd: J.R. Dhurandhar
Remembrancer of Legal Affairs.

gjt. 28.6.4 ca.

U.R. to R.D.No.10862, dated the 10th July 1951.

Office of the R.L.A.

The District Government Pleader appears to have lost sight of section 8B(2) of the Bombay Land Requisition Act, 1948, which provides that "if any person to whom such land is allotted by the State Government fails to pay to the State Government any sum which he is liable to pay under the terms any conditions subject to which such land is allotted to him, or if any person who continues or is permitted to continue to remain in occupation or possession of such land fails to pay an amount of compensation etc." This provision clearly contemplates that the requisitioned land can be allotted on condition of payment of any sum which the allottee is liable to pay under the terms and conditions etc. In the present case the Collector has taken agreements from the allottees specifying the terms and conditions of the allotment. One of these terms and conditions is that the allottee is required to pay a monthly rent of Rs. ---- and there is no provision in the agreement that this sum which the allottee is required to pay is liable to revision in the event of the District Court increasing the compensation payable by Government. In view of the specific condition fixing the amount it would not be possible to contend that it was implied that this amount would be variable according

~~as the District Court would increase or decrease~~

as the District Court would increase or decrease
the compensation payable by Government. Consequently,
it appears that although in equity these allottees
ought to pay the increased compensation still, in
view of the specific terms and conditions of the
allotment it would not be legally feasible to call
upon them to pay the difference between the amount fixed
in the agreement and the amount chargeable on
the basis of compensation fixed by the District
Court. If increased rent is to be recovered from
them, notice for the termination of the present
agreement will have to be given.

Sd: J.R. Dhurandhar

21/6.

Remembrancer of Legal Affairs.

U.R. to R.H.D. No. 9976, dated the 23rd June 1951.

GJT. 28.6. 4 cs.

Legal Department

There is no provision in the agreement of lease for the levy of any fine for the breach of any of the terms and conditions of the lease agreement, the only penalty provided for being resumption (see clause 5 (b) of the agreement). No fine in lieu of resumption can therefore be levied by the Collector unless it be with the consent of the lessee. The lessee in the present case appears to have agreed to the imposition of a fine; but he has not agreed to the amount of fine. Consequently with the consent of the lessee the Collector can levy a fine of Rs. 100/- or any higher fine which Government thinks fit condoning the breach of the condition of the lease.

Sd/- [Signature]

Additional Secretary to Government

U.R. to F.D., No. 13069, dated the 14th August 1951

Legal Department.

Bombay Land
Revenue Code
Section 211.

It appears that the lands in question were granted by the Collector to Jawakar Umberkhede Society on an annual lease for the year 1950-51 subject to the condition that the previous lessees of the lands who belonged to the Backward Class should be admitted as members of the Society, and the same lease has been further extended for the following year 1951-52 in favour of the Umberkhed Cooperative Collective Farming Society, Limited. It appears that none of the previous lessees of the lands has been admitted ^{the intention of granting the lease to the Society has} as a member of the society and obviously not been properly fulfilled. The previous lessees, it appears, have now formed into a Society and want to take over the lands for farming.

There is no Sanad or agreement in writing between the Jawakar Umberkhede Society and the Collector on behalf of Government. Consequently, there would be no legal objection to Government cancelling the lease for the year 1951-52 on the ground that it was improper to deny the previous lessees the benefit of cultivating these lands. Government in exercise of powers under section 211 of the Bombay Land Revenue Code may, therefore, cancel the lease and pay

the compensation to the Jawhar Umberkheda

Society as cost of cultivation of the lands.

Sd/- S. S. S.

Additional Secretary to Government.

U.R. to R.D., No. 13335, dated the 20th August 1951.

GJT. 28.6. 4 cs.

Office of the R.L.A.

After the expiry of the lease on the 30th May 1951 the premises were continued to be occupied by Government and the lessor was informed by the Director of Public Instruction by his letter dated the 16th June 1950 that Government intended to extend the lease for a further period of three years in pursuance of which the premises were continued in occupation of Government and rent was paid to the lessor. It would therefore follow that although no lease has been executed, it amounts to an executed contract. Since it appears that Government vacated the premises before 1st June 1951 it would amount to unlawful termination of the lease and the lessor would be entitled to claim damages from Government. It appears desirable that Government should settle the claim amicably.

Sd: J.R. Dhurandhar,

23/7.

Remembrancer of Legal Affairs.

U.R. To E.D. No. 11640, dated the 23rd July

1951.

Office of the R.L.A.

It appears that lands admeasuring 89 Acres and 69½ Gunthas at Chamber and Vadhavai villages were leased to the Bombay Presidency Golf Club for period of 99 years for a Golf Course under Government Resolution No. 8882-33 dated 8th April 1939. Condition 6 of the lease executed between the parties on 29th June 1944 provides:

"The lessee will have the option to purchase the demised premises except the land under the Central Salsette Tramway Track within 20 years from the commencement of the lease at the valuation of Rs. 1,400/- per acre for the land firstly hereinbefore described and at the valuation of Rs. 1,100/- per acre for the land secondly hereinbefore described." The Golf Club desires to exercise the option to purchase contained in the above clause at the valuation of Rs. 1,400/- per acre for the land firstly described in the lease viz. 80 acres and 35 gunthas at Chamber less what has already been acquired therefrom viz. 15 acres and 7 gunthas and less the land under the Central Salsette Tramway Track admeasuring 3 acres and 2 gunthas. The Golf Club has accordingly made a formal application to purchase the land in exercise of the option under clause 6 of the lease. Government has decided to sell the land to the Golf Club subject to the following

conditions:

(1) that the land shall be used only for a golf course and for such other sports or athletic or other activities as the Club thinks fit with liberty to the club to erect a club house, residential quarters for members and outhouses thereon including such structures and erections as may be required for other sports and athletic and other activities as may be required by the Club subject to the Collector's previous sanction as to the plan of the buildings as provided for in condition (ii) below;

(ii) that previous permission of the Collector and the local body having authority in that behalf shall be obtained for erecting any structure on the land, the plan in respect of which shall also have been sanctioned by the Collector and local body having authority in such matters;

(iii) that the golf club shall ^{remain} open to all irrespective of caste or creed;

~~xxx~~ (iv) that the club shall maintain the drains in the land in good condition so as to allow the storm water to flow through them only and not through any other way so as to spoil the fields in the neighbourhood; and

(v) that the grant shall be liable

to be cancelled and the land shall be liable to be resumed without payment of any compensation in case of breach of any of the conditions of the grant.]

The Collector was asked to consult the Club whether it was prepared to buy the land subject to the aforesaid conditions and such other terms and conditions as the Collector may consider necessary to impose. In reply Messrs. Mulla & Mulla, Attorneys of the Bombay Presidency Golf Club contend that in view of clause 6 of the agreement of lease their client had an option to purchase the demised premises except the land under the Central Salsetta Tramway Track without any terms or conditions and the option to purchase under the lease is different from a grant from Government. Government considers that the aforesaid conditions proposed to be imposed are necessary. R.L.A. is requested to advise whether these conditions can be imposed by Government.]

"A lease may confer upon the lessee an option to purchase the interest of the lessor in the demised premises. This usually takes the form of covenant by the lessor that, if the lessee within a specified period shall give to the lessor notice in writing of a specified length of his desire to purchase the fee simple, or other interest of the lessor in the premises, the lessor will on payment of a specified purchase price, and of any arrears of rent, convey

the demised premises to the lessee

When the option is duly exercised a contract arises for the sale and purchase of the demised premises, and the usual consequences of such a contract follow." (see Halsbury's Laws of England Vol. 20 pages 55-67).

In the present case clause 6 of the lease gives an option to the lessee to purchase the demised premises at the valuations specified therein. This clause does not give any right to the lessor to impose further conditions on the sale of the land when the lessee exercises the option nor does it state that the sale would be subject to all or any of the conditions of the lease. Consequently the proposed conditions (i), (ii) and (iv) though similar to the conditions in clause 2(f) and (g) and clause 8 of the lease cannot be imposed by Government. It is true that the object of the lease was to enable the Golf Club to use the land for its activities as stated in the lease itself; but it appears that as soon as the option to purchase is exercised by the lessee the conditions restricting the use of the land for particular purposes would no longer be operative. The land has already been converted for non-agricultural use and the assessment has been so levied. Consequently the previous permission of the Collector would not be necessary.

Restrictions about the erection of the ~~annexities~~
structures etc. can be imposed by the Bombay Municipality. The condition that the Golf Club shall remain open to all irrespective of caste or creed though a salutary one cannot also be imposed. Since the option does not empower Government ^{to} impose any condition except demand of the price as specified therein it appears that the question of inserting the forfeiture clause will not survive. Under these circumstances the view taken by Messrs. Mulla & Mulla, Solicitors of the Golf Club appears to be correct.

Sd: J.R. Dhurandhar,

6/9

Remembrancer of Legal Affairs.

U.R. to R.D. No. 14316, dated the 7th September 1951

GJT. 29.6. 4 CA

Legal Department.

It is true that the land proposed to be acquired forms part of a piece of land taken on lease from the Government of Bombay. There is no objection, however, to acquiring such leased land (Government of Bombay vs. Esufali, 12 Bom.L.R. 34; Omprakash's Land Acquisition Act, pp. 31-32). The condition in the lease dated the 10th February 1886 only prohibits the lessee from making any disposition of the demised land so as to vest the same in other than one and the same party or parties. This provision obviously refers to a voluntary disposition of the leased land by the lessee himself. If by compulsory acquisition of a portion of the leased land under the provisions of the Land Acquisition Act, 1894, a part of the leased land vests in the Municipal Corporation of Bombay, it would be an involuntary disposition and it cannot be said that the disposition has taken place account of any action on the part of the lessee. The condition in the lease referred to would not, therefore, be attracted and no sanction of Government is necessary as prayed for.

Sd/-

Additional Secretary to Government.

Re: Back Bay plot:
agreement with Jethalal Premji -

The real ground for termination the agreement is that the work has not been completed within the time.]

As to the so-called sub-lease, there is no covenant in the agreement against the Licensee entering into one. It may be that as a license is unassignable the so-called ^{sub-lease} gets no enforceable interest. But the fact that the licensee does something ineffective is no breach of the agreement.]

I suggest that in future agreements should contain some specific provision against assignment or sub-license of any such transaction and for a right of termination in such event.]

The agreement being one whereby a license is granted, the License can be ^{provoked} ~~at~~ any time & provided that the Licensee has not himself expended any moneys on the property.]

It would appear that in this case the Licensee has not done so. It that be the fact the license can be revoked forthwith. Otherwise on the ground of non-completion in time, a months' notice will have to be given.]

Sd/- C.K. Daphtary
 Aug. 25/51.]

GJT. 29.6. 4cs.]

I have settled the notice.
 C.K.D.]

Legal Department.

Attention is invited to the Advocate General opinion dated 25-8-1951 in a similar case.

It seems that in the absence of any express covenant against assignment the transfer itself will not be a sufficient ground for resumption, although the transferee does not get any enforceable interest, although. However, if the licensee has not spent any moneys on the property, it will be possible for Government to revoke the license and the transferee, even though he has spent any moneys, will have no claim against Government as his interest is not enforceable. But if the licensee has spent some moneys it will not be possible to revoke the licence unless he has committed a breach of some express condition in the Agreement.

In the present case it is possible for Government -

(a) to call upon the licensee to revoke the assignment and to terminate the license, ~~xxx~~ if the licensee has not spent any moneys, or

(b) to inform the licensee that under clause (1) and (2) of the Agreement the interest of the transferee is that of a bare licensee and as such non-transferrable and the question of approving the

nominee will arise only after the licensee
becomes entitled to a lease after completion
of the building as provided in clause 6.
It may perhaps be advisable to adopt course
(b) suggested above.

Sd/-

Additional Secretary to Government.

U.R. to R.D., No. 15746, dated the 4th October 1951.

gjt. 29.6. 4 cs.

Legal Department

One of the tenants of the building on plot No. 4 of the Back Bay Reclamation Scheme has constructed an enclosure of wooden trellis on the front compulsory open space and the same is used by the visitors as a sitting out place. The tenant who runs a restaurant also serves the visitors there.

The other tenants of the building have complained to the Collector against the action of the tenant on the grounds that:

(a) the construction and the use amounts to a breach of clause 2(d) and rule 8 of the building rules and

(b) it is a source of a nuisance to them.

As observed by the Collector the construction is a temporary structure and does offend against covenant 2(d) of the Lease read with building rule 8. Government can therefore call upon the Lessee to require the tenant to remove the construction or allow it to remain under a licence charging adequate fees as proposed.

It is doubtful whether the construction can be said to be nuisance to the other tenants on the grounds made out by them. Assuming it is so they are not entitled to require Government to enforce the building rules or the covenants in the lease to suit their convenience or pleasure.

It is open to them to take such action as
they think proper against their land-lord or
co-tenant.

Sd/- F.B..]

Additional Secretary to Government.

U.R. to R.D.No.16224, dated the 13th October, 1951.]

GJT, 29.6. 4 ca.]

Under section 2(1) (9A) of the Indian Companies Act 1913, "managing Agent" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement and includes any person, firm or company occupying such position by whatever name called. In the present case the licence originally granted to Shri Chinubhai Madhavlal was transferred to Messrs. Gujarat Marbles Ltd. as contemplated by clause 21 of the licence. A company is a legal entity and can sue and be sued in that name. The grant of the licence had nothing to do with the appointment of the managing agents. The managing agents are not responsible under the terms of the licence for the payment of the amount of the royalty. They are the servants of Messrs. Gujarat Marbles Ltd. for purposes of the execution of the licence subject of course to the terms of the managing agency agreement entered into by them. The proposal of the Collector of Baroda to recover the dues from Shri Chinubhai Madhavlal does not therefore appear to be legally feasible.

Sd/ J.R. Dhurandhar,

23/11/

Remembrancer of Legal Affairs.

U.R. to R.D., No. 18816, dated the 23rd

November 1951.

GJT. 29.6. 4 cs.

Normally a licensee deposits with the Collector certain amount of money either in cash or in the form of Government securities as security for the due observance and performance of the conditions contained in the Agreement for lease. In case of resumption the Licensee forfeits all his claim to the refund of the deposit-amount. It is also open to the Collector on behalf of Government to appropriate the deposit or any part thereof in satisfaction of any moneys due under the Agreement or for any claims or demands which may at any time be made on behalf of Government against the Licensee (vide the preamble and clause 5(b) and cl. 8 of the form of agreement). An express provision for levy of heavy fine or penalty will not improve the matters any further. Such a provision will always be construed as a provision for maximum compensation payable in case of loss which will have to be proved in a Court of Law. Further, recovery of fine or penalty as arrears of land revenue may involve the same practical difficulties as those experienced in enforcing the right of re-entry.

The real difficulty in the present case as also in other similar cases has been that there is no express provision prohibiting

assignment which can justify the forfeiture of deposit or resumption of land. Since an express prohibition against assignment is being made in all future agreements, no difficulty is likely to arise hereafter.

As regards non-completion of building, clause 5(b) of the Agreement in the present case provided for one month's notice before the exercise of the power of resumption. A notice was accordingly given by the Collector and if the Licensee has failed to complete the building substantially it will be open to Government to resume the land and also forfeit the deposit amount.

J.R. Dhurandhar.

30/11.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 19232, dated the 1st December

1951.